

IC 32-30-10.6

Chapter 10.6. Determination of Abandonment for Property Subject to a Mortgage Foreclosure Action

IC 32-30-10.6-1

Applicability

Sec. 1. This chapter applies to the following:

- (1) A mortgage foreclosure action filed under IC 32-30-10-3.
- (2) A determination that property is abandoned or vacant for purposes of IC 6-1.1-24.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.19.

IC 32-30-10.6-2

"Enforcement authority"

Sec. 2. As used in this chapter, "enforcement authority" refers to the enforcement authority (as defined in IC 36-7-9-2) that has jurisdiction in the location of the property.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.20.

IC 32-30-10.6-3

Abandonment determination; petition by creditor or enforcement authority

Sec. 3. (a) At any time during a mortgage foreclosure action, the creditor may petition the court for a determination that the mortgaged property is abandoned. A petition filed with the court under this section must:

- (1) allege that the mortgaged property is abandoned; and
- (2) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

A petition under this section shall be served on the debtor in the manner prescribed by the Indiana Rules of Trial Procedure.

(b) At any time during a mortgage foreclosure action, the enforcement authority that has jurisdiction in the location of the mortgaged property may petition the court for a determination that the mortgaged property is abandoned by filing a motion to intervene in the foreclosure action in the manner prescribed by the Indiana Rules of Trial Procedure. The motion to intervene must:

- (1) include a statement of the enforcement authority's jurisdiction in the location of the mortgaged property;
- (2) allege that the mortgaged property is abandoned; and
- (3) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

As added by P.L.102-2012, SEC.4.

IC 32-30-10.6-3.5

Abandonment determination; executive of a city or town

Sec. 3.5. (a) This section applies to a property whether or not there is a mortgage on the property.

(b) As an alternative to seeking a determination of abandonment under any other statute, the executive of a city or town that:

- (1) has jurisdiction in the location of a property; and
- (2) does not have a person designated as a hearing authority, as defined by IC 36-7-9-2;

may petition a court for a determination that the property is abandoned.

(c) A petition filed with the court under this section must do all the following:

- (1) Include a statement of the enforcement authority's jurisdiction in the location of the property.
- (2) Allege that the property is abandoned.
- (3) Include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

(d) A petition under this section shall be served on:

- (1) the creditor and the debtor, if the property is subject to a mortgage; and
- (2) any other appropriate party;

in the manner prescribed by the Indiana Rules of Trial Procedure.

As added by P.L.203-2013, SEC.21.

IC 32-30-10.6-4

Court's order to show cause; contents; appearance date; right to present evidence or objections; right to counsel

Sec. 4. (a) Upon receiving a request for a determination of abandonment from a creditor or an enforcement authority through a petition or motion filed with the court and served on the required parties in accordance with section 3 or 3.5 of this chapter, the court shall issue an order to show cause as to why the property should not be found to be abandoned and directing the petitioner, the debtor, and any other person or party the court considers appropriate to appear before the court on a date and time specified in the order under subdivision (1). The court's order under this subsection must do the following:

(1) Direct the parties subject to the order to appear before the court on a date and time specified by the court. The date specified under this subdivision must not be:

(A) earlier than fifteen (15) days; or

(B) later than twenty-five (25) days;

after the date of the court's order under this section.

(2) Notify the parties subject to the order that any party ordered to appear:

(A) may present evidence or objections on the issue of abandonment to the court:

(i) in writing before the appearance date specified by the court under subdivision (1); or

(ii) in writing or by oral testimony on the date and at the time specified by the court under subdivision (1);

in the manner specified by the court; and

(B) has the right to be represented by an attorney when

appearing before the court.

(3) Notify the parties subject to the order that if a party fails to:

(A) submit written evidence or objections to the court before the appearance date specified by the court under subdivision (1); or

(B) appear before the court on the date and at the time specified by the court under subdivision (1);

the party's failure to submit evidence or objections or to appear before the court will result in a finding of abandonment by the court.

(b) A party subject to an order issued by the court under this section has the following rights, as described in the court's order under subsection (a):

(1) The right to present evidence or objections on the issue of abandonment to the court:

(A) in writing before the appearance date specified in the court's order under subsection (a)(1); or

(B) in writing or by oral testimony on the date and at the time specified in the court's order under subsection (a)(1); in the manner specified by the court.

(2) The right to be represented by an attorney when appearing before the court.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.22.

IC 32-30-10.6-5

Prima facie evidence of abandonment; court's order finding property is abandoned

Sec. 5. (a) Subject to subsection (b), for purposes of an abandonment determination under this chapter, one (1) or more of the following constitute prima facie evidence that property is abandoned:

(1) The enforcement authority that has jurisdiction in the location of the property has issued an order under IC 36-7-36-9 with respect to the property.

(2) Windows or entrances to the property are boarded up or closed off.

(3) Multiple window panes on the property are broken and unrepared.

(4) One (1) or more doors to the property are smashed through, broken off, unhinged, or continuously unlocked.

(5) Gas service, electric service, water service, or other utility service to the property has been terminated.

(6) Rubbish, trash, or debris has accumulated on the property.

(7) The property is deteriorating and is either below or in imminent danger of falling below minimum community standards for public safety and sanitation.

(8) The creditor has changed the locks on the property and for at least fifteen (15) days after the changing of the locks the owner has not requested entrance to the property.

(9) There exist one (1) or more written statements, including documents of conveyance, that have been executed by the debtor, or by the debtor's personal representatives or assigns, and that indicate a clear intent to abandon the property.

(10) There exists other evidence indicating a clear intent to abandon the property.

(b) Regardless of whether any of the conditions described in subsection (a) are found to apply, the debtor's failure to either:

(1) present evidence or objections on the issue of abandonment to the court in writing before the appearance date specified in the court's order under section 4(a)(1) of this chapter; or

(2) appear before the court on the date specified in the court's order under section 4(a)(1) of this chapter;

constitutes prima facie evidence that the property is abandoned.

(c) If the court finds that:

(1) one (1) or more of the conditions described in subsection (a) apply; or

(2) the circumstances described in subsection (b) apply;

the court shall issue an order finding that the property is abandoned.

As added by P.L.102-2012, SEC.4. Amended by P.L.203-2013, SEC.23.